

DANIEL G. BOGDEN  
United States Attorney  
ELIZABETH O. WHITE  
Appellate Chief and  
Assistant United States Attorney  
100 West Liberty, Suite 600  
Reno, Nevada  
775-784-5438

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

**-oOo-**

UNITED STATES OF AMERICA,	)	
	)	2:07-cr-145-KJD-PAL
Plaintiff,	)	
	)	Government's Unopposed Motion
vs.	)	to Stay and Hold In Abeyance
	)	Proceedings Regarding Defendant's
MICHAEL WAYNE YOST,	)	Eligibility for a Sentence Reduction
	)	Until His Direct Appeal Is Final
Defendant.	)	
_____	)	

The United States of America, by United States Attorney Daniel G. Bogden and Appellate Chief and Assistant United States Attorney Elizabeth O. White, files this motion to stay and hold in abeyance this Court's order (Doc. #1477) regarding Defendant's potential eligibility for a sentence reduction until Defendant's direct appeal is final and jurisdiction is returned to this Court. In support of this unopposed motion, undersigned counsel states as follows:

1. On March 17, 2010, this Court sentenced Defendant to 168 months' imprisonment upon his conviction for a drug conspiracy in violation of 21 U.S.C. § 846. CR 1279.

1     2.     Defendant filed a timely notice of appeal, CR 1280, which the court of appeals  
2     docketed as C.A. No. 10-10125. *See* CR 1286. After lengthy delays, that appeal is now  
3     fully briefed, and oral argument has been scheduled for October 19, 2015. *See* C.A.  
4     No. 10-10125 (8/11/15 Notice of Oral Argument).

5     3.     On June 8, 2015, pursuant to the protocol this Court established for  
6     evaluating defendants' eligibility for sentence reductions under 18 U.S.C.  
7     § 3582(c)(2) in light of retroactive Guideline Amendment 782, the Federal Public  
8     Defender filed a motion for appointment of counsel to represent Defendant to  
9     determine whether he qualified for such a reduction. CR 1476. On July 8, 2015, this  
10    Court entered an order 1) appointing the Federal Public Defender to represent  
11    Defendant, 2) ordering the probation office to obtain and provide to the parties  
12    information necessary to determine whether Defendant qualified for a reduction,  
13    and 3) setting a briefing schedule. CR 1477.

14    4.     Because Defendant's appeal is pending before the court of appeals, this Court  
15    is without jurisdiction to address his eligibility for a sentence reduction pursuant to  
16    18 U.S.C. § 3582(c)(2) and U.S.S.G. Amendment 782. *See Griggs v. Provident*  
17    *Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam) ("The filing of a notice of  
18    appeal is an event of jurisdictional significance—it confers jurisdiction on the court  
19    of appeals and divests the district court of its control over those aspects of the case  
20    involved in the appeal.”).

1 5. Undersigned counsel contacted Assistant Federal Public Defender Nisha  
2 Brooks-Whittington. Ms. Brooks-Whittington said she has no opposition to the  
3 government's motion or to an order staying and holding in abeyance the proceedings  
4 regarding the Defendant's potential eligibility for a sentence reduction until his  
5 direct appeal is final.

6 For the reasons stated above, the government respectfully requests that the  
7 Court grant this unopposed motion, and stay and hold in abeyance proceedings  
8 regarding Defendant's potential eligibility for a sentence reduction until his direct  
9 appeal is final and jurisdiction has been returned to this Court.

10  
11 Dated this 17<sup>th</sup> of August, 2015.

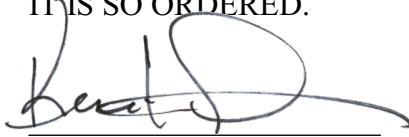
12 Respectfully submitted,  
13

14  
15 DANIEL G. BOGDEN  
16 United States Attorney  
17

18  
19 s/ Elizabeth O. White  
20 Elizabeth O. White  
21 Appellate Chief and  
22 Assistant United States Attorney  
23

Dated: 8/28/2015 \_\_\_\_\_

IT IS SO ORDERED.

  
\_\_\_\_\_  
U.S. District Judge